

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7361

BILL NUMBER: HB 1407

NOTE PREPARED: May 3, 2005

BILL AMENDED: Apr 29, 2005

SUBJECT: Various Election Law Matters.

FIRST AUTHOR: Rep. Richardson

FIRST SPONSOR: Sen. C. Lawson

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (1) The bill makes changes regarding the certification process for voting systems.
- (2) The bill establishes a voting systems technical oversight program.
- (3) The bill requires county election boards to perform public tests of electronic voting systems before election day.
- (4) The bill establishes civil penalties for violations of statutes concerning the use of voting systems in Indiana elections.
- (5) The bill requires a county that uses a punch card voting system to enter into a contract, not later than July 1, 2005, for a voting system certified for use in Indiana elections for delivery not later than January 1, 2006.
- (6) The bill allows the Secretary of State to purchase a voting system for the county if the county does not act.
- (7) The bill permits a voting system previously certified for use in Indiana to continue to be used after the certification expires if the voting system complies with the requirements of HAVA.
- (8) The bill makes other technical changes relating to voting systems.

(9) The bill provides that a person who has been notified of a proposed civil penalty for violation of campaign finance laws may enter into a settlement agreement with the Election Division.

(10) The bill changes the schedule and requirements for filing campaign finance reports by candidates for a state office.

(11) The bill permits the Election Division to authorize county adoption of a proposed precinct establishment order submitted by a county if a voter of the county does not file an objection to the proposed order.

(12) The bill requires the counting of a defective provisional ballot that is defective solely because of an act or a failure to act of an election officer unless fraud, tampering, or misconduct affecting the integrity of the ballot is demonstrated. The bill provides that a county election board can determine by a majority vote of the members not to count such a provisional ballot.

(13) The bill provides for an additional seven days for the certification of election results and the filing of recounts or contests.

(14) The bill provides that personal service upon an individual in a state recount or contest proceeding is not required if the individual's attorney has filed an appearance with the Election Division and is provided with service.

(15) The bill makes the provision imposing the 1% requirement to determine the amount of the cash deposit needed for a recount consistent for both petitions and cross-petitions.

(16) The bill permits certain parties to a recount or contest to file a joint motion to dismiss before the completion of the recount or contest.

(17) The bill specifies that recounts and contests may be conducted and votes counted for an office only in a precinct within the election district for the office.

(18) The bill amends statutes relating to impoundment of records and equipment by order of the State Recount Commission.

(19) The bill provides that the State Recount Commission's authority, in case of fraud or misconduct, to order that none of the ballots cast in a precinct be counted applies to ballots cast by any voting method.

(20) The bill assigns responsibility for custody of original voter registration records for purposes of scanning the records for inclusion of information on the statewide voter registration list.

(21) The bill eliminates the requirement that the Governor and the Lieutenant Governor take the Oath of Office in the presence of both Houses of the General Assembly.

(22) The bill requires all full service license branches to be open on the day before election day and on election day to issue driver's licenses and state identification cards.

(23) The bill removes obsolete references to voting machines, punch card voting systems, and paper ballots.

Effective Date: Upon passage; July 1, 2005.

Explanation of State Expenditures: (1) Under the current law, the Election Commission has the option of requiring a voting system to be tested by an independent authority before approval of the system is granted for use in an Indiana election. Payment for testing is charged to the vendor of the voting system. The bill requires the Election Commission to conduct testing of any voting system by an independent laboratory accredited under the federal Help America Vote Act (HAVA). The vendor would bear all costs associated with the testing. This provision should have minimal impact to Commission's expenditures.

(2) The Secretary of State is required to contract with a person or an entity to conduct the Voting System Technical Oversight Program (the Program.) The person/entity selected is charged to:

(A) Develop and propose procedures and standards for the certification, acquisition, functioning, training, and security for voting systems used to conduct elections in Indiana.

(B) Compile and maintain an inventory of all voting systems used to conduct elections in Indiana.

(C) Review reports concerning voting systems prepared by independent laboratories and submitted by applicants for voting system certification.

(D) Recommend to the Commission whether an application for voting system certification should be approved and, if so, whether the approval should be subject to any restrictions or conditions to ensure compliance with Indiana law.

(E) Perform any additional testing of a voting system necessary to determine whether the voting system complies with state law.

(F) Each year perform random audits of voting systems used to conduct Indiana elections and prepare reports indicating whether the voting systems have been certified, programmed, and used in compliance with Indiana law.

(G) Review contracts, leases, purchase orders, and amendments to those documents concerning the acquisition or maintenance of voting systems.

(H) Assist with the development of quantity purchase agreements and other contracts for the lease or purchase agreements and other contracts for the lease or purchase of voting systems.

(I) Perform any other duties related to the approval or use of voting systems as provided in: state law or the contract with the Secretary of State.

The impact to state expenditure is unknown and would depend on the contract agreement reached between the Secretary of State and the person/entity selected to conduct the Program. However, revenue collected from civil penalties, as proposed under the bill, could be used to administer and enforce the Program.

(6) The Secretary of State would have the option to enter into a QPA contract for the purchase of voting systems for punch card voting machine counties that do not enter into a contract to purchase a new voting system before July 1, 2005. The bill does not provide an appropriation for the purchase of voting systems. The

impact on state expenditures would depend on the number of counties that do not reach a contract agreement with a vendor before July 1, 2005.

It may be possible that federal funding under HAVA (*see below*) could be used to cover the cost of the new systems for counties that have not replaced their punch card machines.

Voting System Cost: Two vendors of direct recording electronic (DRE) were contacted and provided estimates for their latest touchscreen systems. The average price per precinct to purchase the Microvote Infinity would be about \$7,000 to \$8,000, including printer capability and a voice-converter unit. Diebold Systems indicated that their Accutouch would also range from \$7,000 to \$8,000. The estimates are based on two DRE systems and their accessories per precinct. Optical scan systems cost approximately \$5,000 per unit. In addition, the optical-scan system requires ongoing ballot cost. For the 2004 general election, optical scan ballots were about \$0.29 per ballot or \$290 per 1000 ballots.

Federal Funding Under HAVA: Under federal law, the 17 remaining punch card counties in Indiana have HAVA Section 102 funding available in an account administered by the Indiana Election Division. Based on the number of precincts in each of these counties, each county is entitled to approximately \$8,000 *per precinct* for the replacement of their punch card machines for an approved voting system. In addition, each of these counties would be able to receive up to \$50,000 for software and other voting accessibility requirements. It is likely that these revenue sources could cover most if not all of the expense to purchase new voting systems in the remaining punch card counties.

(10) Candidates for state offices are required to file five campaign finance reports in an election year. (Under current law the total filed in an election year is three.) Additionally, a candidate for state office is required to file a supplemental large contribution report with the Election Commission. The Commission is required to prescribe the report form for large contributions. The provision could increase the time the Election Division needs to process the additional reports, in election years, from candidates for state office. However, the Division should be able to process the additional reports within their existing budget.

(11) The Election Division would be allowed to administratively handle precinct orders in counties. This provision should minimally impact Election Division expenditures.

(14) If an attorney has filed for an appearance that concerns a recount with the Election Division on behalf of a candidate, the Indiana State Police is required to serve notice on the attorney for the candidate.

(20) The state or a company on behalf of the state is charged with the care and proper return of voter registration records, if a county were to release copies of the records to the state. The provision would not place the county or the state liable for lost or damaged records. Any company chosen by the state to carry out scanning of the records would be held liable for any lost or damaged records.

(22) State license branches are required to stay open on the following days solely to issue either driver's licenses or identification cards:

Day	Hours
Election day (general, municipal, primary, and special)	6:00 AM - 6:00 PM
Day before election day	8:30 AM - 8:00 PM

The Bureau of Motor Vehicles (BMV) Commission is required to have another day specified as compensatory time or authorize overtime pay for the additional hours worked by license branch employees on an election day. These requirements could be carried out within the existing resources of the BMV. Given that only driver's licenses and identification cards would be issued, it is likely that license branches would not be required to be fully staffed during the additional hours of operation.

(23) Summary: Removing obsolete references to voting machines, punch card voting systems, and paper ballots would reduce expenditures by the Indiana Election Division by a minimal amount.

Background: The Election Division expended between \$12,000 and \$15,000 on paper ballots for the 2004 general election.

Explanation of State Revenues: (2) & (4) Under the bill, a voting system vendor would be subject to a civil penalty that purposefully sold, leased, installed, implemented, or permitted a voting system in an Indiana election that violated any provision of Indiana election law. The Secretary of State would determine if and for how much a penalty would be assessed. Civil penalties, under this provision, would not be able to exceed \$500,000 plus any investigative cost incurred and documented by the Secretary of State.

Revenue from penalties assessed would be deposited in the Voting System Technical Oversight Program Account, as created under the bill, of the state General Fund. The Account would be administered by the Election Division. Revenue in the Account would be used to administer and enforce mandatory testing of election systems before their approval for use in an Indiana election.

(9) Summary: By waiving a hearing with an agreement to pay a civil penalty, the Election Division could receive penalties more quickly and reduce the administrative case load of campaign law violations for the Commission.

Background: Under current law, election law civil penalties are placed in the state Campaign Finance Enforcement Account. As of June 30, 2004, the state Campaign Finance Enforcement Account had a budgetary fund balance of \$12,689, with \$5,041 in fines collected in FY 2004.

Explanation of Local Expenditures: (3) County election boards are required to perform public tests of electronic voting systems. Unless major problems are discovered with a county's voting systems, county election boards should be able to carry out this provision within existing resources.

Precinct election officers are required to assure and certify that an optical scan system:

- (1) is in perfect working order, and
- (2) records that zero votes have been cast before voting begins.

The provision would likely be accomplished within existing resources of the precinct election board.

(11) County executives are required to give notice in newspapers of precinct boundary changes (including instructions for filing an objection with the Election Division.) This provision should impact local expenditure minimally.

(13) The additional seven days would allow extra time for local election officials to process provisional ballots and certify election results. The additional time should ease the administrative burden caused by ballot processing, election results, or petitions for recounts.

Explanation of Local Revenues:

State Agencies Affected: Secretary of State, Indiana Election Division, Indiana Election Commission; State Police; Bureau of Motor Vehicles.

Local Agencies Affected: County election boards, precinct election boards.

Information Sources: Brad King, Indiana Election Division Co-Director; Steve Shamo, Microvote; Steve Cory, Diebold Systems. *State of Indiana HRM Detail Staffing Report, April 4, 2005*; State Budget Agency: *FY2004 General and Rainy Day Fund Summaries*.

Fiscal Analyst: Chris Baker, 317-232-9851.